

**COLORADO WATER RESOURCES &  
POWER DEVELOPMENT AUTHORITY**

**BOARD PROGRAM WORK SESSION (BPWS) AGENDA**

**March 6, 2025**

**3:00 pm**

**Board Members:** Mike Fabbre (Chair), Eric Wilkinson, Steve Vandiver, Chris Treese, Matt Shuler, Karen Wogsland, Lucas Hale, and Bruce Whitehead

**Authority Staff:** Keith McLaughlin, Jim Griffiths, Heather Newton, Justin Noll, Wesley Williams, Ian Loffert, and Kevin Carpenter

**Others present:** Mark Henderson (WQCD), Desi Santerre (DOLA), Alex Hawley (WQCD), and Margaret Talbott (WQCD)

**AGENDA**

1. Arkansas Valley Conduit Intergovernmental Agreement – Final Draft – discussion and possible action (Jim, Keith)
2. Direct Loan Prepayment When Principal Forgiveness is Provided – Staff Recommendations – discussion and possible action (Kevin, Jim)
3. Interim Loan Recommendation – discussion and possible action (Jim)
4. Loan Capacity with Federal Cap Grant uncertainty – discussion only (Keith, Wes)
5. April Board Retreat Topics Review – discussion only (Keith)
6. Private Nonprofit Public Water Systems – Lending Process Improvements – Staff Recommendations – discussion only (Ian, Jim)

**Intergovernmental Agreement Between Southeastern Colorado Water  
Conservancy District, Otero County, the Colorado Water Conservation Board, and  
Colorado Water Resources and Power Development Authority**

This Intergovernmental Agreement (“IGA” or “Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between the Southeastern Colorado Water Conservancy District (“SECWCD”), a statutory water conservancy district pursuant to C.R.S. 37-45-101, et seq., acting by and through the Southeastern Colorado Water Activity Enterprise (“SECWAE”), the County of Otero (“County”), the Colorado Water Conservation Board (“CWCB”), and the Colorado Water Resources and Power Development Authority (“Authority”), a body corporate and political subdivision of the State of Colorado. The parties to this Agreement may be referred to individually herein as a “Party” or collectively as “Parties”.

**PURPOSE**

The purpose of this IGA is to establish a framework for the joint efforts of the Parties to utilize state and federal loan and grant funds to finance, design, construct, maintain, and operate portions of the Arkansas Valley Conduit, as further described below.

**RECITALS**

1. The United States, pursuant to the federal Safe Drinking Water Act of 1996, assists state and local participation in the financing of the costs of drinking water system projects and the Safe Drinking Water Act requires each state to establish a drinking water revolving fund to be administered by an instrumentality of the State.
2. The Authority was created to initiate, acquire, construct, maintain, repair, and operate or cause to be operated certain water resource projects, and to finance the cost thereof;
3. Section 37-95-107.8, Colorado Revised Statutes, created a Drinking Water Revolving Fund (“DWRF”) to be administered by the Authority;
4. In 2021, the federal government created the U.S. Environmental Protection Agency’s Drinking Water Revolving Fund Bipartisan Infrastructure Law Funding Program (the “BIL Program”), funds from which (“BIL Funds”) are intended to be a supplemental appropriation for the DWRF, to be allocated in addition to the annual base DWRF capitalization grants;
5. The Authority has determined to loan certain sums from the BIL Funds and, when available, the base DWRF, to governmental agencies in Colorado to finance all or a portion of the costs of certain water resource projects, which loans are subject to the requirements of applicable federal law, regulations, and guidelines then in effect;
6. The Authority has authorized certain BIL Funds and base DWRF Funds to be applied to qualified governmental agencies as Principal Forgiveness;

7. Clean and reliable supplies of water for municipal and domestic use are essential to the economy, health, safety and welfare of the citizens of the State of Colorado, including Otero County and adjacent Counties within the Arkansas River Basin and SECWCD boundaries;

8. The Arkansas Valley Conduit (“AVC”) refers to the Arkansas Valley Conduit as authorized by Public Law 87-590 as amended by Public Law 111-11. The AVC will be an approximately 100-mile pipeline with spurs that will serve approximately 50,000 people in 39 separate water systems (the “Served Entities”) east of Pueblo and will include the treatment and delivery of water from Pueblo Reservoir. Served Entities will include cities, towns, and private non-profit water companies. The AVC is designed to improve water supplies and quality to users of municipal water supplies located within the Served Entities.

9. The AVC is an authorized feature of the Fryingpan Arkansas Project. The AVC when fully constructed will consist of a main trunk line, spurs and delivery lines that provide treated water to the Served Entities.

10. The AVC is being constructed in two areas of responsibility: the United States Bureau of Reclamation holds the responsibility for designing and constructing the main trunk line consisting of approximately 100 miles of pipe from Pueblo, Colorado, to approximately Lamar, Colorado; and the SECWCD holds the responsibility for designing and constructing the spurs and water delivery lines to the Served Entities. Construction has begun on the main trunk of the AVC.

11. The SECWCD is the agency responsible for the repayment and oversight of the Municipal and Industrial and Irrigation portions of the Fryingpan Arkansas Project, a transmountain diversion project that supplies southeastern Colorado with improved supplemental water supply for irrigation, municipal and industrial uses, hydroelectric power generation, and recreational opportunities, as authorized by Public Law 87-590 (76 Stat. 389), as amended.

12. The SECWCD is charged with coordinating the efforts for the development of the AVC and allocating water to beneficiaries.

13. The total cost of the AVC pipeline was originally estimated to be approximately \$600 million; the estimated cost is now approximately \$1.3 billion.

14. The CWCB is a state agency created pursuant to C.R.S. §37-60-102 et seq. for the purpose of aiding in the development of waters of the state for the benefit of its inhabitants.

15. The Colorado legislature through the CWCB has approved \$30 million in state grant funds HB20-1403 and SB23-177 to the SECWCD or the County of Otero and \$90 million in loan funds HB20-1403 to the SECWAE, to aid in the construction of the AVC spur and delivery lines (the “CWCB AVC Grant Funds” and the “CWCB AVC Loan Funds”).

16. All of the AVC Served Entities are located within the boundaries of the SECWCD and some of those entities are located within Otero County.

17. The SECWAE is responsible for managing and administering the CWCB AVC Grant and Loan Funds. The SECWAE is responsible for operating and maintaining the spur and delivery lines once constructed.

18. Otero County has developed experience as a fiscal agent while administrating funds provided under the March 11, 2020, American Rescue Plan Act (“ARPA”), and is able to act in that capacity as fiscal agent to manage and administer the CWCB AVC Grant Funds.

19. Otero County and SECWCD are parties to a March 30, 2022, Intergovernmental Agreement designating Otero County as the fiscal agent for the CWCB AVC Grant Funds, designating Otero County as the entity to receive the CWCB AVC Grant Funds, and setting forth the SECWCD and Otero County’s responsibilities related to use of the CWCB AVC Grant Funds.

20. The Parties desire that Otero County continue to serve as the fiscal agent related to the CWCB AVC Grant Funds and to provide certain additional administrative services set forth in this Agreement, and to receive and administer CWCB grant funding for use in construction of AVC spur lines, with SECWCD to contribute support staff to the County at no cost to the County;

21. The Parties recognize that repayment of the CWCB AVC Loan Funds by the Served Entities could result in an undue hardship on those communities, and that application of the state CWCB AVC Grant Funds in combination with the federal BIL Program and base DWRP Funds, including applicable Principal Forgiveness and reduced interest rates, can be beneficial to the Served Entities by off-setting and potentially eliminating those repayment costs.

22. The Parties have statutory authority to enter into this agreement and perform the duties set forth herein; and

23. The Parties enter into this Agreement on the belief that it is in the best interests of their respective constituents and customers.

NOW THEREFORE, in consideration of the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. Purpose.**

This Agreement is entered into pursuant to Article XIV §18 of the Colorado Constitution and C.R.S. §29-1-203, to establish a framework for Otero County to serve as fiscal agent for the CWCB AVC Grant Funds, for SECWAE to administer loan funds from the CWCB and the Authority, for the Authority to use BIL Funds and base DWRP Funds through loan agreements with the SECWCD to aid in the construction of the AVC spur and delivery lines, for the CWCB and Otero County to aid in escrowing CWCB AVC Grant Funds as the source of repayment of Authority loans, and for the parties to implement a long-term plan for the application of such funds towards the design and construction of the AVC.

**II. Responsibilities.**

In furtherance of the desire to plan, finance, and construct the spur and delivery lines using state and federal funds, the Authority, SECWAE, Otero County, and the CWCB shall cooperate and each have the following responsibilities:

**A. SECWAE Responsibilities:**

1. SECWAE represents and warrants that it is an “Enterprise” as defined in Article X, Section 20(2)(d) of the Colorado Constitution (“TABOR”) and that it is authorized to enter into the multiple-fiscal year financial obligations provided in this Agreement, notwithstanding Article X, Section 20(4)(b) of the Colorado Constitution. SECWAE will intends to maintain its status as an “Enterprise” throughout the course of this Agreement.
2. SECWAE will negotiate all contracts with third parties for the design, construction, and maintenance of the spur lines and the delivery lines. SECWAE may enter such contracts from each spur line and related delivery lines separately or jointly, at its sole discretion. SECWAE will ensure all contracts meet applicable SRF and CWCB requirements and will provide final drafts of such contracts to all Parties for prompt review and comment prior to execution.
3. SECWAE will apply for, manage, and administer loans from the Authority using BIL Funds or base DWRF Funds for costs related to the AVC spur and delivery lines. It is anticipated that the loans from the Authority will consist of Principal Forgiveness Funds and repayable loan funds.
4. Upon execution of an Authority loan agreement, the SECWAE will request the CWCB to deposit CWCB AVC Grant Funds in an amount sufficient to repay the Authority repayable loan funds plus any administrative costs eligible for repayment under the agreement awarding the CWCB AVC Grant Funds in the escrow account administered by Otero County (the “Escrow Account”; established under Part II.F., below). Such funds shall be identified and encumbered as the sole source of repayment for the Authority repayable loan funds. It is anticipated that there will be a separate loan agreement or loan agreements for each spur line, with individual payment schedules and completion dates as mutually agreeable between the SECWAE and the Authority.
5. SECWAE will submit requisition requests to the Authority pursuant to each Authority loan agreement to reimburse the costs of the design, engineering, construction, replacement, and environmental compliance for the spur and delivery lines of the AVC using BIL Funds or base DWRF Funds.
6. Pursuant to a March 30, 2022, agreement between the SECWAE and Otero County, SECWAE has delegated to Otero County its authority to receive the CWCB AVC Grant Funds. SECWAE now designates Otero County as its agent to receive, deposit in the Escrow Account, use, and administer said funds to repay the repayable loan funds loaned to SECWAE from the Authority, and any administrative costs eligible for repayment under the agreement awarding the CWCB AVC Grant Funds, for each construction project on the spur and delivery lines pursuant to a mutually-agreeable schedule set forth in each loan agreement.

7. SECWAE, or any of its duly authorized representatives, shall have the right to inspect, examine, and audit Otero County's records, books, accounts, and other relevant documents relating to the AVC and this Agreement at any time.
8. SECWAE shall retain oversight authority over Otero County's administration of the CWCB AVC Grant Funds to ensure compliance with this Agreement and that all funds are used in furtherance of the AVC project's mission. SECWAE may inspect Otero County's CWCB grant records upon request, which request shall not be unreasonably denied.
9. SECWAE will exercise its best efforts to negotiate and secure agreements with individual Served Entities for use of the spur and delivery lines and will provide no less than quarterly updates to the Authority.

**B. Otero County Responsibilities.**

1. Otero County warrants and represents that (i) it is a "District" as defined in Colo. Const. Art. X, § 20 ("TABOR"); (ii) it has received a broad form of voter approval to keep and spend revenue in excess of TABOR's limitations [Otero County Referendum 1A, 1995 Coordinated Election]; and (iii) it is authorized to enter into this agreement notwithstanding Section 4(b) of TABOR. Otero County further warrants and represents that the acceptance of grant funding from the CWCB, and its service as a fiscal agent for those funds, will not cause any violation of, or any required election under TABOR.
2. Pursuant to a March 30, 2022, agreement between Otero County and SECWAE, Otero County will obtain, manage, and administer the CWCB AVC Grant Funds to be applied to costs related to the AVC.
3. Otero County shall keep all records and accounting reasonably necessary to facilitate the transfer of CWCB AVC Grant Funds and payments to the Authority for the repayable loan funds subject to the Authority's loan agreements with the SECWAE, and shall prepare an annual report documenting all costs and expenditures as well as summarizing progress to date and anticipated future work.
4. Otero County shall receive, deposit, and administer all CWCB AVC Grant Funds for design, engineering and construction of the AVC spur and delivery lines. The funds shall be maintained and administered by Otero County in the Escrow Account for the exclusive benefit of the AVC spur and delivery line project.
5. Upon receipt from CWCB, Otero County will deposit CWCB AVC Grant Funds in Escrow Account until authorized by SECWAE to release such funds to the Authority to pay the outstanding balance of repayable loan funds under a loan agreement.

6. Otero County shall comply with all requirements imposed by the Authority, CWCB and the SECWAE, and by any other state agency granting funds for the AVC spur and delivery line project, for the accounting and administration of such funds.
7. Otero County will not assume any debt obligation for SECWCD or SECWAE or any other parties while operating as fiscal agent administering CWCB AVC Grant Funds for the AVC spur and delivery line project.
8. Otero County will cooperate with the SECWAE, the Authority, the State Auditor, or any other state agency if any audit is performed pursuant to state or federal law.

### C. Authority Responsibilities

1. The Authority will work in good faith to negotiate, draft, and execute one or more loan agreements with SECWAE for the purpose of lending BIL Funds and Base DWRF funds (if available) to be used for designing, constructing, administering, and maintaining each AVC spur and associated delivery lines. It is anticipated that each loan agreement will include a portion of Principal Forgiveness funds and a portion of repayable loan funds with an applicable administrative cost, which may take the form of charged interest or a flat administrative fee, charged by the Authority to recover its costs of administering the loan agreement. The loan agreements will contain such terms as are necessary to insure compliance with the BIL Program and DWRF requirements, including the application of Principal Forgiveness and reduced interest rates or reduced administrative fees, where applicable. The loan agreement will require bond counsel and general counsel opinions substantially similar to those generally required for DWRF loan agreements issued by the Authority.
2. The Authority will coordinate with the Parties and its partners, the Water Quality Control Division, within the Colorado Department of Public Health and Environment (WQCD), and the Division of Local Government, within the Department of Local Affairs (DOLA), to ensure compliance with federal and state requirements for the BIL Program, the DWRF program, and state statute, including but not limited to C.R.S. §37-95-107.8, and to develop a streamlined application and funding mechanism for the SECWAE for the construction of spur and delivery lines.
3. It is the intent of the Parties that each loan agreement encumbers sufficient CWCB AVC Grant Funds to repay the repayable loan funds from the Authority provided under each Authority loan agreement with the SECWAE for each spur line and related delivery lines, together with such estimated interest that will

accrue under the loan agreement. The CWCB AVC Grant Funds will be the sole source of loan repayment for the Authority repayable loan funds.

4. The Authority will work with Otero County, the SECWAE, and the CWCB to establish the Escrow Account under which all or a portion of CWCB AVC Grant Funds are set aside and secured for administration by Otero County. The Escrow Account will result in an irrevocable commitment of such CWCB AVC Grant Funds as are necessary to repay the Authority repayable loan funds and any administrative costs eligible for repayment under the agreement awarding the CWCB AVC Grant Funds for each Authority loan agreement.
5. The Authority and its partners DOLA and WQCD will review proposed project costs for each spur line and delivery line, and the applicability of federal provisions for the use of BIL Funds and base DWRF Funds, including but not limited to Davis Bacon & Related Acts, codified at 40 U.S.C. §§ 3140 through 3148, Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014, (the “Appropriations Act”) and related State Revolving Fund Policy Guidelines, which require that all of the iron and steel products (as defined in the Appropriations Act and Guidelines) are made in the U.S., and the Build America Buy America Act, enacted as part of the Bipartisan Infrastructure Law, including guidance for implementing the BABA Act provided by the Office of Management and Budget, where applicable.
6. The Authority and its partners DOLA and WQCD will perform periodic reviews and construction inspections as necessary to ensure compliance with applicable federal and state requirements and will exercise best efforts to coordinate such reviews and inspections with the CWCB, as necessary to satisfy CWCB grant requirements, as applicable.
7. The Authority will review requisition requests from SECWAE and, pursuant to the terms of the applicable loan agreement, disburse BIL Program and/or DWRF Principal Forgiveness funds and repayable loan funds, as applicable, to the SECWAE for payment to contractors constructing the applicable spur line and associated delivery lines.
8. The Authority, in coordination with SECWAE, will submit requisitions to Otero County and the CWCB pursuant to the repayment terms of the loan agreement between the Authority and the SECWAE for each spur line or associated delivery line, and upon receipt and acceptance, CWCB will authorize the release of escrowed CWCB AVC Grant Funds administered by Otero County for that purpose, and Otero County will deliver such funds to the Authority to pay the repayable loan funds and accrued interest, pursuant to the escrow agreement required herein.
9. The Authority may elect, at its sole discretion, and only after approval by its Board of Directors and notice to the Parties, the following: to establish a set, flat administrative fee for each loan agreement in lieu of applying an interest



rate to the repayable loan funds; and, to the extent interest is applied to any Authority repayable loan funds, to waive any or all interest charges against the repayable loan funds.

#### **D. CWCB Responsibilities**

1. CWCB will review each contract and supporting documentation for construction of each spur line and delivery line for which CWCB AVC Grant Funds will be used prior to final execution to ensure compliance with CWCB AVC Grant Funds allowable uses.
2. CWCB will use AVC Grant Funds to pay Otero County the “repayable loan funds” portion (est. 50%) of all eligible costs of the AVC Spur and Delivery Lines as the project progresses. Otero County will set aside, reserve, and escrow funds from the CWCB AVC Grant Funds pursuant to that estimate in the Escrow Account.
3. CWCB will coordinate with the Parties to develop the Escrow Account under which the portions of the CWCB AVC Grant Funds necessary to repay the Authority repayable loan funds and any administrative costs eligible for repayment under the agreement awarding the CWCB AVC Grant Funds for each loan agreement will be irrevocably pledged and reserved, to be administered by Otero County and released, pursuant to the terms of the Escrow Account, for repayment of the Authority’s repayable loan funds and accrued interest pursuant to the terms of each Authority loan agreement.
4. CWCB will conduct any necessary reviews and inspections of each spur line and delivery line as required by the CWCB grant award. CWCB will exercise best efforts to coordinate its reviews and inspections with the Authority and its partners.
5. CWCB and the Authority will prepare joint periodic progress reports for their respective Boards of Directors regarding use of the CWCB AVC Grant Funds for each spur line and associated delivery lines.
6. CWCB, or any of its duly authorized representatives, shall have the right to inspect, examine, and audit Otero County’s records, books, accounts, and other relevant documents relating to the AVC and this Agreement at any time.
7. For each applicable loan agreement for spur lines and associated delivery lines, and upon submission by the Authority of a requisition approved by the CWCB, CWCB will coordinate with SECWAE and Otero County to release CWCB AVC Grant Funds from the Escrow Account for the purpose of funding the payment necessary to pay the outstanding balance of repayable loan funds, and any administrative costs eligible for repayment under the agreement awarding the CWCB AVC Grant Funds on each Authority loan.

#### **E. Joint Responsibilities**

1. The Parties will coordinate and exercise best efforts to explore, pursue, and if applicable, secure additional funding sources, including additional federal funding when available, to design, construct, maintain, and administer the spur lines and delivery lines in order to minimize or eliminate the costs to the entities receiving water deliveries through the AVC Project.
2. **Escrow Account.** The Parties, coordinated by Otero County, will engage a third-party financial institution acceptable to all Parties to hold all funds escrowed under this Agreement in one or more escrow accounts (the “Escrow Account”). The Parties will enter into an escrow agreement governing the Escrow Account consistent with the duties and obligations of this Agreement. The Escrow Account will identify Otero County as the administrator and will allow Otero County to direct the release of funds from the Escrow Account to the Authority to repay the Authority repayable loan funds plus any accrued interest on the loan, upon receipt of a requisition approved by the CWCB and submitted by the Authority. The Escrow Account may be interest bearing, and Otero County will be entitled to receive periodically any interest accrued to the Escrow Account not otherwise necessary to pay the Authority’s administrative fee or interest charged on each loan agreement as consideration for its actions as fiscal agent and administrator under this Agreement. The Escrow Account shall not expire until all CWCB AVC Grant Funds, or any supplemental funds subsequently provided, have been properly distributed to repay any outstanding Authority repayable loan amounts, unless otherwise terminated in writing by mutual agreement of all Parties.

### III. Project Plan and Implementation.

- A. Further Intergovernmental Agreements and Contracts Necessary: the Parties agree to initiate discussions with the other Parties and with AVC Served Entities in order to negotiate and execute Intergovernmental Agreements and other Contracts, as may be necessary, for implementation of the AVC Project. In particular, the Parties anticipate that such Intergovernmental Agreements likely will include (1) escrow agreements providing for the reservation and security of specific CWCB AVC Grant Funds for the purpose of securing each Authority loan to SECWAE, and for the release of such funds upon the substantial completion, or other mutually-agreed upon schedule, of each spur and related delivery lines; (2) an intergovernmental agreement providing for any necessary repayment of the Authority loans, and federal financial support for the AVC; and (3) service and maintenance agreements between Served Entities and the SECWAE.
- B. Fee for Performance of Fiscal Agent Duties. In consideration of Otero County’s performance of the services described in this Agreement, in addition to any interest accrued to the Escrow Account, and to cover Otero County’s administrative, overhead, and other expenses in connection with the Project, Otero County shall receive from one or more Parties an amount not to exceed the value of one percent (1%) of the CWCB AVC Grant Funds. Such amount shall not exceed, when combined with the interest accrued to the Escrow Account and distributed to Otero

County, the reasonable and necessary costs and expenses Otero County incurs in performing the services of fiscal agent as provided in this Agreement.

#### **IV. Dispute Resolution.**

If a dispute arises between the Parties relating to this IGA, then the following procedure shall be followed:

- A. The Executive Director of SECWAE, a representative from Otero County, the Executive Director of the Authority, and the Executive Director of the CWCB, or their designees, shall hold a meeting promptly, but in no event later than 20 calendar days from the written referral of the dispute by any Party, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party hereto of any remedies to which such Party would otherwise be entitled under this IGA unless otherwise agreed to by the Parties in writing.
- B. If, within 20 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
- C. The Parties agree to participate in good faith in the mediation and related negotiations for a period of 30 calendar days. The substantive law of the State of Colorado shall apply to the proceedings, but the rules of procedure and evidence need not be adhered to. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other legal remedy. The Parties agree to reasonably expedite any legal proceedings brought hereunder in order to obtain a prompt resolution.

#### **V. Assignment and Delegation.**

No Party may assign or delegate its rights and obligations under this IGA.

#### **VI. Term.**

This Agreement shall be perpetual and remain in full force and effect until: (a) the Parties mutually determine and agree in writing that all work on the AVC as provided in this IGA has been completed; (b) this IGA is superseded by a new written agreement between the Parties; or (c) when the CWCB AVC Grant Funds, or any supplemental grant funds that are added to the Agreement by mutual agreement of the Parties, are exhausted.

#### **VII. Reduction Clause.**

This IGA represents the entire agreement of the parties, and neither party has relied on any fact or representation not expressly set forth herein.

### VIII. Miscellaneous Provisions.

**A. Notices – How Provided.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date sent by email (with confirmation of transmission and receipt) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section X.A):

To SECWAE:                    Executive Director  
    Southeastern Colorado Water Conservancy District  
    31717 United Avenue  
    Pueblo, CO 81001  
    Facsimile: (719) 948-0036

To Otero County:            Otero County Administrator  
    Otero County Courthouse  
    13 West Third Street, Room 212  
    La Junta, CO 81050  
    Facsimile: (719) 383-3090

To CWCB:                      Colorado Water Conservation Board  
    Department of Natural Resources  
    Executive Director  
    1313 Sherman Street, Suite 718  
    Denver, CO 80203  
    Facsimile: (303) 866-4474

To Authority:                 Colorado Water Resources and Power Development  
    Authority  
    Executive Director  
    1580 Logan Street, Suite 820  
    Denver, CO 80203  
    Facsimile: (303) \_\_\_\_\_

**B. Notice – Substantive Change in Circumstances.** Should any substantive change or alteration occur to a Party that material affects that Party's ability to meet its duties and obligations under this Agreement, that Party must promptly provide notice to all other Parties. Such notice must be provided within 35 days of the affected Party's knowledge of the change of circumstances, and at a minimum must

describe the nature of the change and the anticipated affect on the Party's duties and obligations under this Agreement.

- C. No Impairment of Existing Contracts.** Nothing in this Agreement shall impair, amend, limit, abridge, contravene or otherwise affect the rights of any Party under any existing contracts or agreements.
- D. No Restriction on Water Powers or Parties.** Nothing herein shall be deemed or construed to restrict, prohibit, or otherwise limit any Party from obtaining water services, facilities, or programs from any source that such Party may desire on its own or in a combined manner with anyone.
- E. Full Force and Effect.** Except as hereinafter provided, this Agreement and the contractual obligations and rights hereunder shall continue in full force and effect until amended or modified by the Parties.
- F. Liability of Parties.** No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon each Party nor the breach thereof, nor the issuance and sale of any bonds by a Party, shall constitute or create an indebtedness of the other Parties within the meaning of any Colorado constitutional or statutory provision. Unless otherwise agreed in writing between any of the Parties, no Party shall have any obligation whatsoever to repay any debt or liability of the other Party.
- G. Headings for Convenience Only.** Paragraph headings and titles contained in this IGA are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this IGA.
- H. Amendment.** This IGA may be modified, amended or changed in whole or in any part only by an agreement in writing duly authorized and executed by the Parties with the same formality as this IGA.
- I. Severability.** Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.
- J. Effect of Invalidity.** If any portion of this IGA is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any party named within this agreement, the parties agree to use their best efforts to reform as soon as possible any such invalidity and achieve a valid agreement that accomplishes the purposes of this IGA as originally set forth.
- K. No Additional Beneficiaries.** There are no express or implied beneficiaries outside of this Agreement. No party not named within this Agreement has any right to enforce this Agreement.

- L. Governing Law.** This IGA and its application shall be construed in accordance with the laws of the State of Colorado.
- M. No Attorneys' Fees.** In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this IGA, the parties agree that each shall be responsible for their own costs and attorneys' fees associated with any such activities, with the exception of any claims found by the courts to be frivolous or groundless as per Colorado statutes.
- N. Intent of Agreement.** This IGA is intended to describe the rights and responsibilities of and between the Parties; it is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto; nor to limit, impair or enlarge in any way the powers, regulatory authority and responsibilities of the Parties, or any other governmental entity not a party hereto.
- O. Non-Business Days.** If the date for any action under the IGA falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in C.R.C.P. 6, then the relevant date shall be extended automatically until the next business day.
- P. Successors.** This IGA and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors.
- Q. Counterparts.** This Agreement may be executed in counterparts, each of which, when combined, shall be deemed to be an original. Facsimile or scanned signatures shall be an acceptable form of execution of this Agreement.

Southeastern Colorado Water Conservancy District,  
 acting by and through Southeastern Colorado Water  
 Activity Enterprise

By: \_\_\_\_\_  
 Date: \_\_\_\_\_

Otero County

By: \_\_\_\_\_  
 Date: \_\_\_\_\_

Colorado Water Conservation Board

By: \_\_\_\_\_  
 Date: \_\_\_\_\_

Colorado Water Resources and Power Development Authority

By: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT



**COLORADO WATER RESOURCES &  
POWER DEVELOPMENT AUTHORITY**

The Amp – Suite 820, 1580 NLogan Street, Denver, Colorado 80203-1942  
303/830-1550 · Fax 303/832-8205 · info@cwrpda.com

**MEMORANDUM**

**March 3, 2025**

**TO: Board of Directors and Karl Ohlsen**  
**FROM: Jim Griffiths, Deputy Director**  
**Kevin Carpenter, Senior Financial Analyst I**  
**RE: Loan Prepayment Policy**  
**Water Pollution Control Revolving Fund (“WPCRF”)**  
**Drinking Water Revolving Fund (“DWRF”)**

The Authority Board of Directors has the ability to adopt policy and set conditions for all loan approvals.

The Board of Directors has expressed concerns about the possibility of borrowers receiving large amounts of principal forgiveness (“PF”) while having the ability to prepay or payoff the loan principal shortly after execution. Current policy allows borrowers to prepay their loan at any time after execution upon providing 30 days’ notice to the Authority.

Staff has reviewed possible recommendations and has outlined three options below to address the Board’s concerns.

**Option 1:** Leave prepayment policy unchanged and determine prepayment conditions on a case-by-case basis when deemed necessary by the Board or staff. Given our tight SRF loan capacity and funding uncertainty, a prepayment may be considered desirable.

**Option 2:** Adopt a policy to restrict prepayment of loans that are comprised of 50% or more PF within a set amount of years from loan execution.

Ex: 2022 Denver Water Lead Direct Loan prepayment conditions –

- 20-year loan, restricted prepayment for first five years
- 30-year loan, restricted prepayment for first seven years

If prepayment occurs prior to the restricted years, the borrower must pay all interest that would have been accrued in the years of restriction along with the principal payoff.

**Option 3:** Adopt a policy to restrict prepayment of any loan involving any amount of PF within a set amount of years from loan execution, outlined similarly to option 2 above.

**Historical Prepayment Information:**

Prepayment 5-Year History		
	Within 2 yrs of execution	Within 5 yrs of execution
BIL Loans	0	0
All Direct Loans	0	1*

Loan Amortization Interest Payments*			
	First 3 years	First 5 years	First 7 years
20 yr loan	24%	40%	54%
30 yr loan	17%	27%	37%

\*Colorado Centre MD, WPCRF Direct loan, no PF

\*Approx. % of total interest paid within first 3-7 years

**Staff Recommendation:** Staff recommends option 1, to leave the current prepayment policy unchanged. The Board has the ability to set conditions on loan applications on a case-by-case basis. Staff will continue to review and monitor upcoming loan applications and notify the Board when additional prepayment conditions may be warranted.





# COLORADO WATER RESOURCES POWER DEVELOPMENT AUTHORITY

The Amp - Suite 820, 1580 N Logan Street, Denver, Colorado 80203-1942  
303/830-1550 • Fax 303/832-8205 • [info@cwrpda.com](mailto:info@cwrpda.com)

## MEMORANDUM

March 7, 2025

**TO: Board of Directors and Karl Ohlsen**

**FROM: Jim Griffiths, Deputy Director  
Wesley Williams, Assistant Finance Director**

**RE: 2025 Interim Loan Program\* – Staff Recommended One-Year Temporary Suspension of Interim Loan Applications and Approvals**

Authority staff recommends that the Board continue to temporarily suspend new interim loan applications. Currently, there are no interim loans outstanding, and no interim loan applications are pending. Staff has not been made aware of any projects that are being affected by the interim loan pause or any interest in pursuing the interim loan financing. Another key factor is the uncertainty of Federal funds moving forward potentially causing delays with long-term financing take-out options such as USDA and the SRF that could cause interim loans to remain outstanding well beyond the interim loan term.

The Interim Loan Program provides ‘bridge’ financing for water projects in Colorado. Examples of bridge financing provided by the Interim Loan Program include the following:

- To bridge the gap between an Authority leveraged loan approval and a leveraged loan bond issue.
- For construction financing of a USDA loan. USDA requires interim loan financing for all of its loans.
- To fund the design and engineering costs for larger projects that do not have the fund balances to complete the design and engineering that enables them to apply for SRF (or other) financing.

The last several interim loan executions and/or fund withdrawals were delayed significantly and posed risks to the Authority that staff would like to mitigate in the future. These issues included, but are not limited to, the following:

- Uncertain timing for takeout and payoff of the interim loan resulting in re-approvals (extensions) often with no specific resolution in sight.
- Payoff source (including one USDA loan) was not accessible, resulting in a long period of accrued interest.
- Given the uncertainty of future funds, an interim loan may not payoff within a reasonable time, therefore locking up Authority funds for a longer period of time than intended, and one recent interim loan approval was never executed, resulting in reserving limited funds that could have been deployed for other purposes.

However, staff has successfully executed a State Revolving Fund (“SRF”) design and engineering loan instead of utilizing the interim loan program.. This provided the necessary up-front funding while not affecting or restricting Authority cash or leading to any of the risks posed above.

Staff therefore recommends that the Board approve another one-year suspension of the interim loan program and continue to review the program annually. The temporary suspension will allow staff to gauge demand and the necessity of the program going forward. This request will be presented to the Board Program Work Session in Denver, Colorado, on March 6, 2025.

\*General Notes: On April 22, 2021, Authority Staff presented a historic look at the Interim Loan Program and policy. Then, on June 4, 2021, Staff proposed changes to the interim loan program. The Board adopted changes to the interim loan program including a shorter term and the accrual of interest on both the drawn and undrawn portions of the loan at different rates. The Board approved pausing the interim loan program on February 1, 2024, subject to an annual review of the program.



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303/830-1550 · Fax 303/832-8205 · info@cwrpda.com

### MEMORANDUM

March 7, 2025

**TO: Board of Directors and Karl Ohlsen**

**FROM: Jim Griffiths, Deputy Director  
Ian Loffert, Senior Financial Analyst II**

**RE: Drinking Water Revolving Fund Program (“DWRF”)  
Private Nonprofit (“PNP”) Public Water Systems – Lending Process Improvements –  
Discussion and Guidance**

Senate Bill 15-121 in 2015 authorized the Authority to fund eligible PNP public water systems through the DWRF. Since 2015, the Authority has executed 4 PNP loans for approximately \$7.1 million and has one approved, but unexecuted, PNP loan for \$1.4 million.

Every PNP loan has presented its own unique, and often significant, set of challenges that had to be addressed prior to loan execution. These loans are time-consuming for staff and, on average, have taken five months longer than and cost much more than standard direct loans to execute. As of January 1, 2024, the Board approved conversion planning grants in the amount of \$25,000 to encourage and ease the financial burden of PNPs converting to a local government.

Staff, with the help of Karl Ohlsen and legal counsels that have experience working with private water companies, have reviewed various types of water system entities and structures in order to build the broadest picture of the various types of PNPs that might request a loan from the Authority and how they are set up and function.

In order to alleviate staff burden, reduce costs and time, and address problem areas ahead of the PNP loan application process, staff has provided the following recommendations for Board consideration and discussion:

#### **Short-term suggestions that *do not* require Intended Use Plan (“IUP”) updates:**

- Add a funding alternatives analysis that is required as part of the Project Needs Assessment (“PNA”) review process. This analysis will review the financial differences and impacts to ratepayers and compare the costs of coming through the SRF program as different types of local governments versus a PNP.
- Make the funding alternatives analysis a required talking point of borrowers’ public meetings.
- Require full audited financial statements annually instead of just CPA reviews.

#### **Long-term suggestions that *will* require IUP changes:**

- Impose a maximum dollar amount of PNP loans per year.
- Set higher interest rates for PNP loans. The rate will be closer to a standard market rate and similar to the Colorado Water Conservation Board’s (“CWCB”) commercial rate.
- Implement a PNP loan fee to help offset the admin costs related to staff time and counsel review.

#### **Additional steps staff is working on:**

- Developing a guidance document with a list of conditions and requirements that PNP borrowers must meet prior to submitting a loan application.
- Including staff talking points during meetings with prospective borrowers that encourage government formation and discuss the length of time and high legal counsel costs necessary to execute PNP loans.
- Implementing formal staff training on making loans to non-governmental entities.

**Board Action:** Review, discuss, and provide Board guidance on recommendations to be brought forth for possible approval at the April 25, 2025, Board meeting.